COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion into the appropriate regulatory plan to succeed price cap regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' retail intrastate telecommunications services in the Commonwealth of Massachusetts	DTE 01-31

OPPOSITION OF AT&T TO VERIZON'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, TO SUPPLEMENT SURREBUTTAL TESTIMONY OF VERIZON MASSACHUSETTS[1]

Introduction

On November 16, 2001, Hearing Officer Foley requested comments on a motion filed by AT&T Communications of New England, Inc. ("AT&T") on November 13, 2001, seeking leave to file supplemental surrebuttal of Deborah Walbaum, dated November 13, 2001, relating to the validity of information from the E911 database for use in this docket. Hearing Officer Foley's November 16 memo also requested comments on a motion filed by Verizon Massachusetts ("Verizon") on November 14, 2001, seeking to strike portions of the initial surrebuttal testimony of Deborah Waldbaum, filed on November 1, 2001, or in the alternative, leave to file further responsive testimony to such portions. The portions of Ms. Waldbaum's testimony that Verizon seeks to strike relate to Verizon's failure to provide evidence of provisioning parity of the special access circuits used by Verizon's competitors.

[1] AT&T's Opposition also addresses Verizon's request, made by letter from Vic Del Vecchio, dated November 19, 2001, to file supplemental surrebuttal in response to the Supplemental Surrebuttal of Deborah S. Walbaum filed following Verizon's supplemental response to ATT-VZ 2-8.

Two issues are, thus, put in play by the foregoing motions: (1) whether the E911 database used by Verizon in this case to demonstrate competition is, in fact, reliable for that purpose, and whether Verizon should have the right to file still more testimony on this issue; and (2) whether the ability of Verizon's competitors to obtain from Verizon the facilities they require to compete with Verizon should be considered in this proceeding given that it is not disputed (as explained below) that it is relevant to their ability to exert competitive pressure on Verizon's pricing power and, if so, whether Verizon should have the right to file still more testimony.

E911 Issue. Based on a November 19, 2001, letter from Verizon's counsel to the Department, it appears that Verizon does not contest the relevance of the E911 database issue and does not oppose AT&T's motion for leave to file supplemental surrebuttal testimony on that issue, provided that Verizon may file further surrebuttal in response.[2] Accordingly, AT&T's comments here are limited to an opposition to Verizon's request for leave to file further responsive testimony to the supplemental surrebuttal of Deborah Waldbaum. AT&T's opposition is based on the fact that Verizon has had multiple opportunities to address this issue and does not need yet another one.

Need To Consider Special Access Provisioning In This Docket. Verizon's motion seeks to strike portions of Ms. Waldbaum's November 1 surrebuttal testimony relating to special access provisioning on the ground that such provisioning issues are being considered in other dockets. As set forth in more detail below, AT&T opposes Verizon's motion on the grounds that the relevance to this docket is not disputed and the consideration of such issues in other dockets

[2] Verizon's decision not to oppose AT&T's motion to file supplemental surrebuttal is presumably driven by the fact that it was Verizon's late response to AT&T discovery that prevented AT&T from including the E911 related testimony of Ms. Waldbaum in her initial surrebuttal testimony filed on November 1.

does not address the central issue in this case: whether lack of special access provisioning parity today compromises the ability of competitors to discipline Verizon's current pricing power. Verizon's Motion to Supplement Surrebuttal Testimony should be denied because Verizon, in three rounds of testimony, failed to meet its burden of demonstrating that its wholesale provisioning permits its competitors to compete.

I. VERIZON'S MOTION TO STRIKE TESTIMONY RELATING TO SPECIAL ACCESS PROVISIONING SHOULD BE DENIED.

AT&T opposes Verizon's Motion to Strike those portions of Ms. Waldbaum's testimony that address Verizon's failure to provide information on its provisioning performance of special access circuits.[3] As demonstrated in Ms. Waldbaum's Rebuttal Testimony filed August 24, 2001 and in her Surrebuttal Testimony filed November 1, 2001, Verizon's performance in provisioning special access circuits is integral to the Department's evaluation of competition in Massachusetts.[4] For the reasons set forth in Ms. Waldbaum's Rebuttal Testimony, CLECs cannot obtain unbundled network elements ("UNEs") to provide local business services and, therefore, CLECs must continue to rely on special access services in order to compete with Verizon. Thus, the ability of CLECs to compete effectively in the market significantly depends on Verizon's performance in provisioning special access circuits to CLECs.[5]

In its motion, Verizon contends that the Department should not consider Verizon's performance in provisioning special access circuits in this case. Nowhere in its motion does

---

[3] *Motion to Strike or, in the Alternative, to Supplement Surrebuttal Testimony of Verizon Massachusetts*, D.T.E. 01-31 (November 14, 2001) ("*Verizon Motion To Strike*"), at 2-3.

[4] *Rebuttal Testimony of Deborah S. Waldbaum*, D.T.E. 01-31 (August 24, 2001), at 3; *Surrebuttal Testimony of Deborah S. Waldbaum*, D.T.E. 01-31 (November 1, 2001), at 4.

[5] *Rebuttal Testimony of Deborah S. Waldbaum*, D.T.E. 01-31 (August 24, 2001), at 3; *Rebuttal Testimony of John W. Mayo*, D.T.E. 01-31 (August 24, 2001), at 31-32; *Rebuttal Testimony of John W. Mayo*, D.T.E. 01-31 (August 24, 2001), at 31-32; *Surrebuttal Testimony of John W. Mayo*, D.T.E. 01-31 (November 1, 2001), at 14-15.

Verizon dispute that its special access provisioning performance is relevant to the ability of CLECs relying on Verizon's special access services to compete with Verizon at retail.[6] The sole ground of Verizon's motion is that Verizon's special access provisioning performance is being investigated in D.T.E. 01-34 and may be investigated in an FCC proceeding, if the FCC acts favorably on an AT&T petition.[7] However, the fact that regulatory agencies find it necessary to investigate Verizon's performance in provisioning special access circuits only confirms Ms. Waldbaum's testimony that a review of such provisioning is necessary for the Department to determine whether competition as it exists today is sufficient to warrant Verizon retail price deregulation. Unless Verizon provisions special access circuits to CLECs at parity with its own retail customers, Verizon's competitors are unlikely to be able to compete effectively and exert sufficient discipline on Verizon to justify price deregulation.

Verizon argues that "any possible negative impact on competition that could result from Verizon MA's provisioning of special access services will be resolved in other proceedings."[8] Verizon, however, must prove now, in this proceeding, that sufficient competition exists today to justify deregulation; Verizon cannot simply assume that whatever impediments to full competition will be found in other regulatory proceedings will be remedied. Indeed, it is not at all clear how any deficiencies in Verizon's provisioning under the federal special access tariff will be remedied. The Department has determined that, although it can use data based on provisioning under the federal tariff, it cannot directly regulate provisioning under the federal

---

[6] Indeed, in footnote 5 of *Verizon Motion To Strike*, Verizon concedes the relevance of its wholesale provisioning performance to this case by stating its intent to take full advantage of any favorable ruling in D.T.E. 01-34 to support its request for deregulation.

[7] *Verizon Motion To Strike*, at 2-3.

[8] *Verizon Motion to Strike*, at 3.

tariff.[9] While Verizon refers to a possible FCC proceeding that will investigate special access provisioning deficiencies under the federal tariff, there is no way to know how long such a proceeding will take. More to the point, in any regulatory proceeding that now exists or in the future may exist, it is entirely unknown at this point what types of provisioning problems will be disclosed by the data, what types of remedies will be called for, whether such remedies will take a short or a long time to implement, and how effective they will be. Verizon's assumption that such future remedies ensures competition today hardly provides the Department with the facts necessary to approve Verizon's petition.

As Verizon has effectively conceded, its wholesale provisioning performance is relevant (indeed a *necessary* consideration) to its claims for deregulation and, therefore, Ms. Waldbaum's surrebuttal testimony on Verizon's failure to present any evidence of its performance in provisioning special access circuits should remain on the record.[10]

II. VERIZON'S MOTION TO SUPPLEMENT ITS CASE YET AGAIN SHOULD BE DENIED.

A. Verizon's Motion To Supplement Its Case Relating to Special Access Provisioning Should Be Denied.

In its November 14 motion seeking to strike the portions of Ms. Waldbaum's November 1 surrebuttal testimony concerning special access provisioning, Verizon requested in the

---

[9] *Order on AT&T Motion To Expand*, DTE 01-34 (August 9, 2001), at 11.

[10] For this reason, AT&T does not oppose in principle Verizon's request that the record developed in D.T.E. 01-34 be incorporated by reference in this case. AT&T does, however, oppose any further delay in this case to permit the results of D.T.E. 01-34 to be included in this docket before a decision in this docket is made. Because wholesale provisioning parity is essential to the ability of competitors to discipline Verizon's pricing power, data relevant to this issue should have been provided by Verizon as part of its case-in-chief to meet its burden of proof. The Department should not delay action on Verizon's request for deregulation caused by Verizon's failure to properly support its request in the first instance.

alternative that it be permitted to file further testimony in response. AT&T opposes Verizon's request for additional rejoinder.

Since at least the filing of AT&T's and Network Plus's rebuttal testimony on August 24, 2001, Verizon has been aware that its provisioning of special access circuits is an important consideration in this proceeding. In the AT&T filing of August 24, 2001, AT&T demonstrated that special access provisioning is a critical consideration in this case: First, Dr. Mayo explained why Verizon's count of lines provided by "full facilities-based carriers" included an unknown but substantial amount of lines served by CLECs using Verizon's special access services. Second, Mr. Fea explained why AT&T must rely on Verizon facilities, notwithstanding a preference to use its own facilities. Third, Ms. Waldbaum explained why AT&T must obtain Verizon facilities under its special access tariff rather than under its UNE tariff. In addition, Dr. August H. Ankum of Network Plus cited "Verizon's poor provisioning and maintenance performance" as a reason for refusing Verizon's request for deregulation." [11]

In its September 21 rebuttal testimony, Verizon completely ignored the issue of special access provisioning. Indeed, Verizon's only acknowledgement of that issue was an admission by Mr. Mudge that the E911 lines that Verizon had previously counted as full facilities-based lines may well be served by Verizon's facilities under a special access tariff.[12] Given that Verizon no longer presents any affirmative evidence of competition from CLECs that do not rely on Verizon facilities, it is remarkable that Verizon continued to ignore the issue of whether its wholesale provisioning to its competitors permits them to fairly and effectively compete. Nevertheless, for

[11] *Direct Testimony of Dr. August H. Ankum*, D.T.E. 01-31 (August 24, 2001), at 5.

[12] Mr. Mudge accordingly changed the name of these lines from lines provided by full facilities based carriers to "CLEC switch lines." *See Rebuttal Testimony of Robert Mudge*, D.T.E. 01-31 (September 21, 2001), at 5.

whatever reasons, Verizon ignored the issue of special access provisioning in its September 21 rebuttal testimony.

When AT&T addressed the issue of special access provisioning in Ms. Waldbaum's November 1 surrebuttal testimony, Verizon again ignored it when it filed its rejoinder testimony on November 14. In her November 1 surrebuttal testimony, Ms. Waldbaum explicitly identified Verizon's failure to present any evidence of its performance in provisioning special access circuits – in effect an invitation to Verizon to take this last opportunity (the opportunity to file rejoinder testimony on November 14) to make its case. Instead of responding to Ms. Waldbaum's statements, and probably because it has no response, Verizon filed a motion asking the Department to move the issue to another case, and asking for yet another opportunity to address it if the Department does not rescue Verizon from its previous failures by removing the issue from the case.

It is Verizon's burden in this case to prove that there is competition sufficient to discipline Verizon's pricing in the absence of price regulation. Where Verizon's competitors rely on Verizon's wholesale provisioning to provide that competition, it is necessarily Verizon's burden to demonstrate that its wholesale provisioning permits its competitors to compete fairly. Having failed to provide any evidence of adequate wholesale provisioning in three rounds of testimony, the Department should not give Verizon a fourth opportunity. The Department should deny Verizon's request to supplement its case yet again.

B. Verizon's Request In The November 19 Letter Of Its Counsel For Leave To File Further Testimony In Response To Ms. Waldbaum's November 13 Supplemental Surrebuttal Should Be Denied.

For similar reasons, Verizon's request for supplemental rejoinder testimony in response to the supplemental surrebuttal of Ms. Waldbaum should be denied. In its November 19 letter to

the Department, Verizon argues that it must be allowed to respond to Ms. Waldbaum's testimony for the sole reason that Verizon should be the last party to offer testimony in a proceeding. AT&T, however, was forced to file supplemental surrebuttal because Verizon did not respond in a timely fashion to ATT-VZ 2-8. More importantly, the issue addressed in Ms. Waldbaum's supplemental surrebuttal – the E911 database as an inaccurate and unreliable measure of competition in Massachusetts – is not new. It was raised in the August 24, 2001 round of testimony by Dr. Mayo,[13] Dr. Ankum,[14] and Lee Selwyn on behalf of the Attorney General's Office.[15] Verizon used the opportunity to file rebuttal testimony on September 21 to present a limited defense of the E911 database as a of measure competition. Dr. Mayo, in his surrebuttal, again attacked Verizon's use of the E911 database, but Verizon ignored this criticism in its November 14 rejoinder. Verizon has had ample notice and multiple opportunities to explain and defend adequately its use of the E911 database. Verizon should not have yet another round of testimony on this issue.

Conclusion

For the reasons stated above, the Department should deny Verizon's motion to strike those portions of Ms. Waldbaum's surrebuttal testimony that address Verizon's failure to prove provisioning parity of special access services. In addition, the Department should deny

[13] *Rebuttal Testimony of John W. Mayo*, D.T.E. 01-31 (August 24, 2001), at 34.

[14] *Direct Testimony of Dr. August H. Ankum*, D.T.E. 01-31 (August 24, 2001), at 17.

[15] *Direct Testimony of Lee L. Selwyn*, D.T.E. 01-31 (August 24, 2001), at 39-46. Mr. Selwyn raised the question of whether CLEC Direct Inward Dialing ("DID") numbers behind a PBX switch are included in the E911 database. With the information provided by Verizon in response to ATT-VZ 2-8, Ms. Walbaum was able to answer this question on behalf of AT&T in her supplemental surrebuttal.

Verizon's motion to supplement its surrebuttal testimony with respect to both the E911 issue and the special access provisioning issue.

Respectfully submitted,

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

_____

Robert Aurigema, Senior Attorney
AT&T Communications of New England, Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111

Jeffrey F. Jones, Esq
Kenneth W. Salinger, Esq.
Jay E. Gruber, Esq.
Katherine A. Davenport, Esq.
Palmer & Dodge LLP
111 Huntington Avenue
Boston, MA 02199
(617) 239-0449

November 21, 2001